

U.S. App. No.: 10/618,796
Filed: July 14, 2003

REMARKS

Claims 1 - 13 are currently pending and under examination. By this amendment, claim 11 has been amended. Claims 1 - 13 stand rejected. Claims 1 and 11 are independent.

Support for amended claim 11 may be found, inter alia, in the specification as originally filed at paragraph [00060] and Figure 11. (*at page 8, lines 1 - 4*). Applicants respectfully request reconsideration of claims 1 - 13 in light of the amendments and remarks that follow.

Rejection Under 35 U.S.C. 103(a)

On page 2 of the June 10, 2005 Office Action the Examiner rejected claims 1 - 13 under 35 USC §103(a) as being unpatentable over Nason (U.S. Patent No. 5,869,003). Applicants respectfully disagree with this rejection and request reconsideration in light of the remarks set forth herein.

The Office Action states that Nason discloses a self contained diagnostic test unit including a buffer container with an interior, buffer fluid and a weakened portion, a test strip held by securement, a test strip container, a sample collector for holding a sample and shaped to receive the buffer container and having channeling member with a lumen, wherein when the buffer container is squeezed, a membrane is ruptured and reagent mixes with the sample from the lumen to the wick to the test strip.

The Office Action concedes that Nason does not disclose a filter, but does disclose a wick which is described as being a porous sponge block. The Office Action concludes that it would have been obvious to one of ordinary skill in the art at the time of the invention to have recognized that the pores in the sponge block perform a filtering function.

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Applicants respectfully maintain that Nason's so-called "filter" is merely a "sponge" whose only function is to wick liquid. In contrast, the filter of the present invention not only functions to control the flow of liquid and filter impurities from the material being tested, but also to hold the test strip in place in the chamber of the test strip container (page 8, paragraph [00060] and Figure 11). As claimed, in claim 1 as originally filed and claim 11 as amended, the filter includes a securement that fastens the test strip and holds it in place, gripping it on several surfaces.

Nason does not teach or suggest that the "wick" be used to secure anything, let alone the test strip. The wick only contacts the test strip when the wick is rotated to make direct contact with only the lower end of the test strip (column 7, lines 39 – 51). In contrast, in the claimed device, the test strip is always held in place by the securements on the filter.

Accordingly, it would not have been obvious to use a sponge block (wick) as the filter in the present invention because the test strip would not have been properly secured, which would adversely affect the function of the claimed device.

Accordingly, Applicants respectfully submit that the invention is not rendered obvious by Nason and request that the Examiner reconsider and withdraw the rejection of claims 1 - 13 under 35 U.S.C. 103(a).

On page 3 of the June 10, 2005 Office Action the Examiner rejected claim 5 under 35 USC §103(a) as being unpatentable over Nason in view of Weiler et al (U.S. Patent No. 5,131,856 ("Weiler")). The Office Action states that Weiler discloses a dispensing vial with a bulb in the form of a bellows-type cylinder upon which there is placed a longitudinal compressive force.

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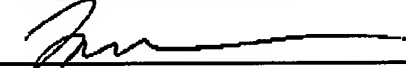
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The deficiencies discussed above are not cured by the inclusion of Weiler because Weiler, alone or in combination with Nason, does not discuss, suggest or teach the device of claim 1. Therefore, the 35 U.S.C. 103(a) rejections of dependent claim 5 should be withdrawn and a Notice of Allowance should be issued.

CONCLUSION

Applicant respectfully submits that this application is in condition for allowance. Early and favorable action is earnestly solicited. No fee is believed due in connection with the filing of this Amendment. However, if any additional fees are due the amount of such fee may be charged to Deposit Account No. 19-4709.

Respectfully submitted,



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